



Response to Grand Jury Report

“Ethical Political Practices-
Enforcement of Campaign and
Lobbying Laws”

Grand Jury Report Overview and Response Instructions



- On April 27, 2010 the Grand Jury released its report titled “Ethical Political Practices- Enforcement of Campaign and Lobbying Laws.”
- The report includes eight findings and six recommendations.
 - One of these recommendations is addressed to the San Diego County Board of Supervisors
- The City Council is required to provide responses on each of the findings and recommendations by July 26, 2010.

Grand Jury Report Overview and Response Instructions



- Our office has developed proposed responses to the Findings and Recommendations.
- In preparing the proposed responses, our office discussed with the City Attorney and Ethics Commission staff factual information regarding regulations that govern the Commission.
- Responses are also based on previous Council or Committee actions, and additional IBA research.

Grand Jury Report Overview and Response Instructions



- For each finding in the report, the City Council must respond by either *agreeing or disagreeing wholly or partially with the finding*.
- For each recommendation, the City Council must respond that the recommendation either *has been implemented, has not yet been implemented but will be implemented in the future, requires further analysis, or will not be implemented*.

Finding 01



“Without the protections afforded by being designated as an independent entity in the City Charter, the San Diego City Ethics Commission is subject to elimination by repeal of the ordinance that establishes it.”

Proposed Response: Partially Disagree

- Designating the Ethics Commission as an independent agency is not the only protection afforded to the Commission in regards to elimination.
- The City’s Ordinance process is protection in itself. While the City Council does retain full control of the Commission’s existence and its procedures, the City’s Ordinance process is deliberative and open to the public.

Finding 02



“Some officials who have been fined for minor violations have expressed a concern that they may be perceived as unethical”

Proposed Response: Agree

- There could be unwarranted implications such as the perception of being “unethical” associated with an “ethics commission fine” levied for a relatively routine violation such as the late filing of a lobbying disclosure report or a Statement of Economic Interest.

Finding 03



“The majority of the activity of the Ethics Commission deals with monitoring compliance with the City’s election campaign and lobbying laws and providing training in those laws.”

Proposed Response: Partially Disagree

- Based on statistics provided by the Ethics Commission on the number of complaints received and the time spent on education related to campaign, lobbying, and ethics laws, the Grand Jury’s statement is correct for calendar year 2009.
- In 2008 more time was spent on Complaints related to Ethics laws not Campaign and Lobbying laws.
- The Commission’s focus is based on the number of complaints and requests for informal advice received and can vary from year to year.

Finding 04



“A change of the name of the Ethics Commission to something analogous to that of the State’s Fair Political Practices Commission would allay the concerns of City officials and more accurately reflect the actual work of the Commission.”

- Proposed Response: Agree
 - Ethics Commissioners have generally expressed their view that a name change would help alleviate some of the unwarranted implications associated with an “ethics commission fine” levied for relatively routine violations.
 - Commissioners also indicated a name change may mitigate the perception that a nominal Commission fine is “unethical.”

Finding 05



“The power to subpoena witnesses granted to the Ethics Commission by ordinance is provided only for administrative hearings and does not extend to investigations.”

- Proposed Response: Agree

Finding 06



“The power to subpoena witnesses for formal investigations would streamline the process and could eliminate the need for more costly administrative hearings.”

- Proposed Response: Disagree
 - The benefits of issuing subpoenas for testimony during the investigative process were discussed previously at an October 2008 City Council Hearing and a September 2009 Rules Committee Meeting.
 - No action was taken at September 2009 Rules Committee Meeting

Finding 06 (continued)



- In a September 11, 2009 City Attorney's Office Report to the Rules Committee, they cautioned that the expansion of subpoena authority should not be "granted lightly" and that certain protections should be provided to witnesses that are compelled to testify at the investigative stage of Commission proceedings.

Finding 07



“The two vacancies on the seven member Ethics Commission endanger its ability to levy fines and to establish a quorum for its meetings.”

- Proposed Response: Agree
 - In April 2010 the City Council confirmed the appointments of two commissioners and reappointed two commissioners to the Ethics Commission.
 - Two additional members have left the Commission due to term limits and resignation.
 - The Mayor’s Director of Boards and Commissions has requested that the City Council members submit names of candidates to fill these two vacancies.

Finding 08



“The State Fair Political Practices Commission is not equipped to perform regular audits of County elections, does not have sufficient staff to investigate conflict of interest allegations against local officials, and does not enforce City and County lobbying laws.”

- Proposed Response: Agree
 - The FPPC’s jurisdiction extends to state public officials and candidates and entities that lobby state officials while the Ethics Commission operates locally.
 - The Ethics Commission has incorporated some state law provisions into its Election Campaign Control Ordinance and its Ethics Ordinance but has also adopted many laws that are purely local in nature, which the FPPC does not regulate.

Recommendation 10-01



“Place a measure on the ballot to amend the City Charter to ensure the Ethics Commission is established as an independent body.”

Proposed Response: Will not be implemented

- If the City Council desired to eliminate or alter the Ethics Commission they would need to amend the Municipal Code through an Ordinance process.
- This process is deliberative and allows the public and stake holders multiple opportunities to comment on the proposed changes.
- Ballot Measure is not required.

Recommendation 10-02



“Enact an ordinance changing the name of the Ethics Commission to the San Diego Political Practices Commission, or a substantially similar name, to be more indicative of its mission and activities.”

Proposed Response: Requires Further Analysis

- Because the Ethics Commission was established by ordinance, the Office of the City Attorney has advised that the Council can change the name of the Ethics Commission by adopting an ordinance amending the San Diego Municipal Code.
- The Council President has stated that he will docket this item at a Rules Committee meeting for discussion in the fall.

Recommendation 10-03



“Enact an ordinance amending Chapter 2, Article 6, Division 4 of the San Diego Municipal Code to allow the Ethics Commission to issue witness subpoenas during Commission investigation with an affirmative vote of at least four commission members. Said amendment should contain safeguards to protect the rights of those witnesses.”

Proposed Response: Will not be implemented

- In September 2009 the Rules Committee discussed expanding the Ethics Commission’s subpoena power and no affirmative action was taken.

Recommendation 10-04



“Docket a discussion of proposed changes in the method of appointing Ethics Commissioners at an upcoming meeting of the Rules Committee (Or other appropriate Council Committee)”

Proposed Response: Will be implemented in the future

- City Attorney has stated that as long as the Mayor’s and Council’s delineated powers under Charter Section 41 are not infringed on, a process could be established to provide advice and recommendations.
- The Council President has stated that he will docket this item at a Rules Committee for discussion in the Fall.

Recommendation 10-05



“Appoint or re-appoint Commission members to fill all existing vacancies by the present method of making such appointments.”

Proposed Response: Has been implemented and will be implemented in the future

- On April 27, 2010 the City Council confirmed the appointments of two commissioners and reappointed two commissioners. Since that time, two additional members have left due to term limits and resignation.
- The Mayor’s Director of Boards and Commissions has requested that the City Council members submit names of candidates to fill these two vacancies.



Questions?

Finding 03 (continued)



Complaints Received Concerning Alleged Violations		
Type of Complaint	2009	2008
Violation of Election Campaign Laws	13%	22%
Violation of Lobbying Laws	50%	6%
Violation of Ethics Laws	30%	67%
Other Complaints (Generally outside the Ethics Commission's Jurisdiction)	7%	5%
Total Complaints related to Election Campaign and Lobbying Laws	63%	28%

Requests Received for Informal Advice (Classified by Ethics Commission staff as Education)		
Type of Complaint	2009	2008
Election Campaign Laws	21%	28%
Lobbying Laws	25%	31%
Ethics Laws	54%	41%
Total Requests for Informal Advice related to Election Campaign and Lobbying Laws	46%	59%